

**Military Police Complaints
Commission**

2010-11

**Departmental Performance
Report**

The Honourable Peter G. MacKay
Minister of National Defence

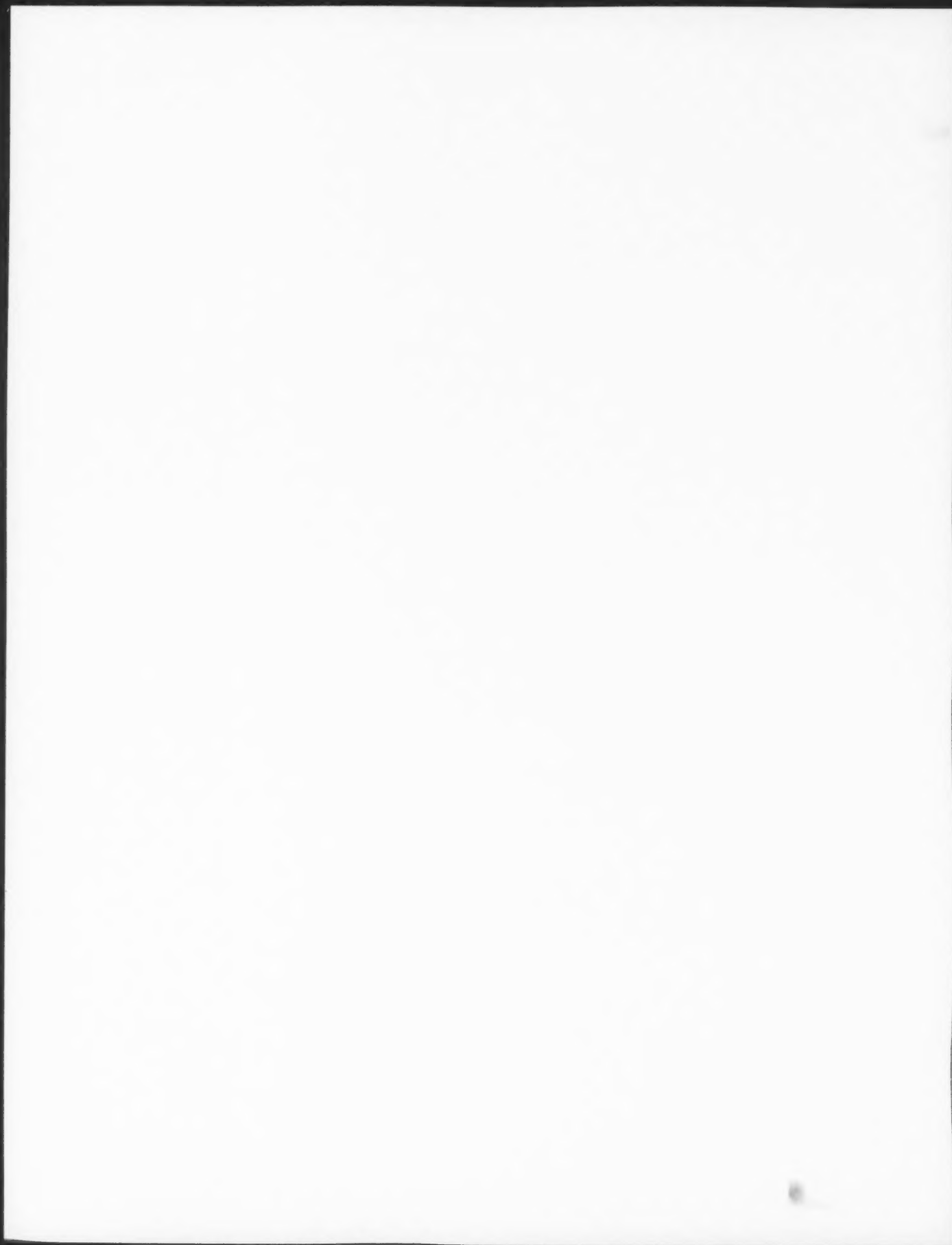


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Chairperson's Message

I am pleased to present the Military Police Complaints Commission's (the Commission) *2010-11 Departmental Performance Report* (DPR).

The Commission was established by the Government of Canada to provide independent civilian oversight of the Canadian Forces Military Police, effective December 1, 1999. This was executed by an amendment to the *National Defence Act*, Part IV of which sets out the full mandate of the Commission and how complaints are to be handled. As stated in Issue Paper No. 8, which accompanied the Bill that created the Commission, its role is "to provide for greater public accountability by the military police and the chain of command in relation to military police investigations."

The Commission identified two priorities in its *2010-11 Report on Plans and Priorities*: improving the effectiveness and efficiency of the complaints resolution process and improving governance.

The Commission took a number of important initiatives to address these two priorities while at the same time managing the challenges of an increasingly public profile and workload associated with the Afghanistan Public Interest Hearing into a "failure to investigate" complaint by Amnesty International Canada and the British Columbia Civil Liberties Association. This complaint alleged members of the Military Police failed to investigate Canadian Forces Commanders having authority for transferring detainees to the Afghanistan authorities in the face of a known risk of torture.

In 2010, the Commission continued its work on the Afghanistan Public Interest Hearing. The Commission entered its final hearings stage from November 15 to December 2, 2010, followed by receipt of written submissions in late January 2011 and oral submissions on February 2, 2011. Based on its consideration of these submissions along with the whole of evidence, the Commission began drafting the Interim Report.

In addition, the Commission dealt with two non-Afghanistan detainee-related judicial review applications of the Commission's final reports before the Federal Court. The Commission also prepared its submissions for the Second Five Year Review of the *National Defence Act* while meeting the many demands of an extremely complex caseload involving investigations of individual complaint files.

During 2010-11, the Commission delivered its Outreach Program to six Canadian Forces bases to increase awareness in the military police community regarding the Commission's mandate and

complaints' resolution processes. Through these visits, further insight was gained into the many challenges faced by the Military Police. In addition, for the first time, the Commission was invited to make presentations to increase awareness of its mandate and processes to participants at the Canadian Forces Military Police Academy advanced military police training course in Borden, Ontario. The MPCC made five such presentations to approximately 25 participants at the Sergeant level in each session. Ms Julianne Dunbar, General Counsel, and I were honoured to make presentations before the Military Police Symposium on March 31, 2011.

On May 14, 2010, I was honoured to have been appointed Chairperson of the Commission. During 2010-11, I have continued to be impressed by the dedication of Commission staff and their contributions to effectively achieving the Commission's mandate. I have also greatly appreciated the professional and productive working relationship that exists between the Commission and the Canadian Forces Provost Marshal, the Deputy Commander responsible for Professional Standards, the Professional Standards staff, and the military police community.

Glenn Stannard
Chairperson
September 15, 2011

Section I: Organizational Overview

Raison d'être

On behalf of all Canadians, the Military Police Complaints Commission (the Commission) exists to provide greater public accountability by the military police and the chain of command in relation to military police activities. The Commission derives its mandate from Part IV of Canada's *National Defence Act*.

Responsibilities

Anyone, including civilians, may make a complaint about military police conduct including those individuals not directly affected by the subject matter of the complaint. Such complaints are handled in the first instance by the Canadian Forces Provost Marshal (CFPM) and the Commission monitors the CFPM's investigations. The Commission may at any time during a CFPM investigation, assume responsibility for the investigation or call a public hearing if it is deemed in the public interest to do so. Complainants can request the Commission review the complaint if they are not satisfied with the results of the CFPM's investigation or the disposition of the complaint.

A member of the military police conducting or supervising an investigation is also able to complain about improper interference encountered in the conduct of an investigation. The Commission has exclusive jurisdiction over complaints of interference.

The Commission ensures the military police complaints process is accessible, transparent and fair to all concerned. The Commission, in its review of conduct or interference complaints, identifies and makes recommendations regarding opportunities for improvement, be it in the conduct of individual military police members or in systemic areas such as the policies and procedures that govern the conduct of all military police. These recommendations for change, when implemented, support the military police in maintaining the highest standards of professional conduct and in assuring the integrity of military police investigations. The effective discharge of the oversight activity by the Commission also provides assurance to members of the Canadian Forces, and ultimately to all Canadians, that they are being served by a military police service of the highest quality.

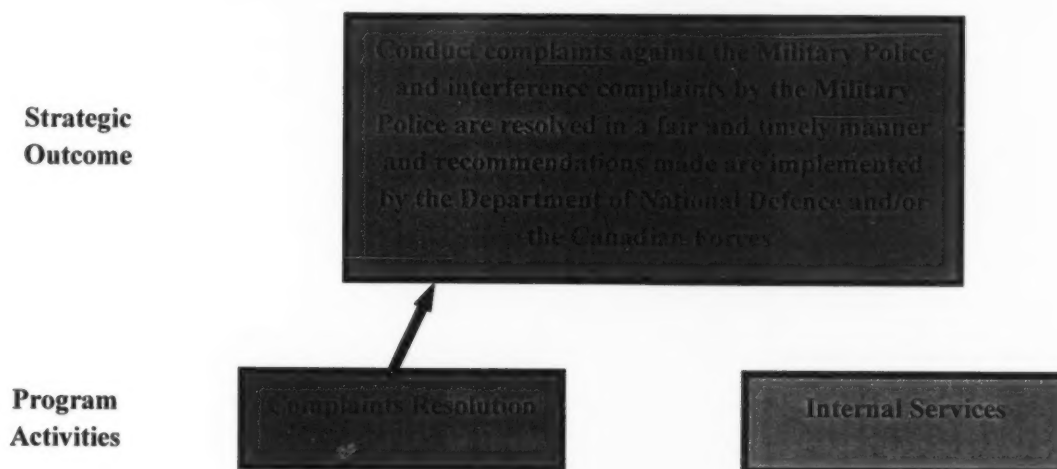
The Commission is a micro-agency. Operating out of Ottawa, the Commission currently has 19 full time employees (FTEs) and a program budget of \$3.5 million. As a result of the Public

Interest Hearing and the Federal Court application, the Commission requested and received an additional \$5.0 million over three fiscal years ending in 2010-11.

The Commission is an independent Federal government institution as defined under Schedule 1.1 of the *Financial Administration Act*. It reports to Parliament through the Minister of National Defence. As an independent and quasi-judicial agency, and one of eight distinct but related organizations in the Defence Portfolio, the Commission must operate at a distance and with a degree of autonomy from government including the Department of National Defence and the Canadian Forces. All members of the Commission are civilians and report to the Chairperson, independent of the Department of National Defence and the Canadian Forces, in fulfilling their responsibilities and accountabilities in accordance with governing legislation, regulations and policies.

Tribunal decisions and Commission operations and administration must also be, and be seen to be, free from ministerial influence other than seeking the signature of the Minister of National Defence, as the Minister responsible, to table the Commission's Reports on Plans and Priorities; Departmental Performance Reports; Annual Reports to Parliament; and other accountability documents such as Memoranda to Cabinet and Treasury Board Submissions.

Strategic Outcome(s) and Program Activity Architecture (PAA)



Organizational Priorities

Performance/Priority Status Legend

Exceeded: More than 100 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result or priority identified in the corresponding Report on Plans and Priorities (RPP) was achieved during the fiscal year.

Met all: 100 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and expected outputs) for the expected result or priority identified in the corresponding RPP was achieved during the fiscal year.

Mostly met: 80 to 99 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and expected outputs) for the expected result or priority identified in the corresponding RPP was achieved during the fiscal year.

Somewhat met: 60 to 79 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result or priority identified in the corresponding RPP was achieved during the fiscal year.

Not met: Less than 60 per cent of the expected level of performance (as evidenced by the indicator and target or planned activities and outputs) for the expected result or priority identified in the corresponding RPP was achieved during the fiscal year.

| Priority | Type ¹ | Strategic Outcome(s) and/or Program Activity(ies) |
|---|-------------------|---|
| Improving the effectiveness and efficiency of the complaints resolution process. | Ongoing | Conduct complaints against the Military Police and interference complaints by the Military Police are resolved in a fair and timely manner and recommendations made are implemented by the Department of National Defence and/or the Canadian Forces. |
| Resolution of complaints in a timelier manner and the provision of meaningful recommendations | Ongoing | The Commission can do no better than to have 100% of its recommendations accepted. |

1. "Type" is categorized as follows: **Previously committed to**—committed to in the first or second fiscal year before the subject year of the report; **Ongoing**—committed to at least three fiscal years before the subject year of the report; and **New**—newly committed to in the reporting year of the Departmental Performance Report.

| | | |
|--|--|--|
| increase the likelihood that the specific and systemic issues identified for change will be agreed upon and the improvements recommended will be implemented. The changes made will improve the quality of military policing and contribute directly to maintaining the confidence and support of those the Military Police serve. | | However, the Commission will continue work with its partners in DND and the CF to identify additional opportunities for collaboration that may further streamline the complaints resolution process and contribute to the quality of recommendations made. |
| Status: Met all | | |
| 100% of the Final Reports' recommendations were accepted by the Canadian Forces Provost Marshal (CFPM). | | |

Complementary to the Commission's efforts to address various workload challenges, it also addressed its two 2010-11 priorities: **PRIORITY 1: Improving the Effectiveness and Efficiency of the Complaints Resolution Process** and **PRIORITY 2: Improving Governance**.

PRIORITY 1 - Improving the Effectiveness and Efficiency of the Complaints Resolution Process

Highlighted below in bold are the five planning elements contained in the Commission's 2010-11 RPP to support the achievement of PRIORITY 1, along with a summary paragraph (s) of related performance and activities carried out for each of these elements.

Plan, Conduct and Report the Results of its Investigations

The quality of the Commission's complaints' resolution process remains high as evidenced by the 100% acceptance and implementation of Commission recommendations.

However, it should be recognized although costs and timeframes are monitored throughout the investigation and report writing stages of the complaints resolution process, the achievement of targets (no matter how carefully and realistically established) can still be influenced by the unpredictability of workload and the varying scope, number and complexity of complaints received.

The Commission measures its performance against the achievement of its strategic outcome in two very critical areas – whether complaints are resolved in a fair and timely manner and whether recommendations resulting from investigations are implemented by the Department of

National Defence and/or the Canadian Forces. During 2010-11, the Commission continued to perform well in both of these areas.

Through its investigations, the Commission strives to assure fairness to both complainants and subject members at every stage of the process. With regard to the acceptance and implementation of recommendations, it should be noted that the Notice of Action, the official response to the Interim Report, outlines what action, if any, has been or will be taken in response to the Commission's recommendations. Generally, prior to the issuance of the Final Report, the Commission follows up to determine whether or not its recommendations have been implemented. For 2010-11, 100% of the Commission's recommendations were accepted and implemented. This is the fifth year in a row the Commission had 100% acceptance and implementation.

Operate Effectively

The Commission continued to complete its investigations in accordance with the critical path developed specifically for each investigation.

The Commission continued to apply a number of measures to support the operational and administrative effectiveness of the Afghanistan Public Interest Hearings:

- continued use of Commission boardrooms as the official on-site location for hearings to streamline logistical issues such as security and access to technology; minimize costs; and optimize the deployment of human resources;
- maintaining registry/information management protocols to ensure orderly and secure management of a high volume of sensitive, complex evidence and legal and other documents;
- meeting increased media demands for information;
- employee training initiatives e.g. a staff training session was held on the identification of information and assets under the *Access to Information Act*, *Privacy Act* and the *Policy on Government Security* to ensure the appropriate classification and marking of sensitive information.

Cost Control

Because the Commission does not control the number, the complexity or the timing of the complaints it receives, it must be able to increase its operational capacities with very little advance notice while maintaining control over the costs of investigations. The Commission continued to use external subject matter experts to supplement its own internal resources.

The Commission continued to examine potential options to enhance its investigative capacity in order to further strengthen organizational sustainability. It also continued to use its roster of contract investigators to facilitate matching the type of complaint with investigation requirements and investigator skill sets. Existing billing practices and a fee structure established for investigators minimize costs and prevent downtime. The Commission advertises potential contract opportunities on its website for both investigators and lawyers. This also provides for increased transparency and openness regarding contracts.

Increase Transparency of Commission Operations

The Commission must ensure its mandate, roles and responsibilities, and complaints resolution processes are well known among its stakeholders: the Military Police, the Canadian Forces and Canadian citizens in general.

Through its Outreach Program, the Commission visited six Canadian Forces bases across Canada (Toronto, Ontario; London, Ontario; Shilo, Manitoba; Dundurn, Saskatchewan; Moose Jaw, Saskatchewan; and Halifax, Nova Scotia) in 2010-11 and dialogued with key stakeholders on these topics. The Commission also received valuable feedback that will enable it to further tailor these presentations to the appropriate audiences.

For the first time, the Commission was invited to make presentations to increase awareness of its mandate and processes to participants at the Canadian Forces Military Police Academy (CFMPA) in Borden, Ontario. Five such presentations were attended by approximately 25 participants at the Sergeant level at each session. Other sessions are to be scheduled for the 2011-12 fiscal year in accordance with the CFMPA's training calendar.

In addition, to further reinforce the transparency of its operations, the Commission:

- shared its professional experience and expertise at the Ontario Association of Chiefs of Police (OACAP); the Canadian Association for Civilian Oversight for Law Enforcement (CACOLE); and gave a presentation to a university Military Law class at the University of Ottawa.
- met in Ottawa, in June 2010, with representatives of the Trinidad Judge Advocate General's Office and a commander from its military chain of command, as well as two representatives of the Canadian Judge Advocate General's Office. A presentation was made on the mission and mandate of the Commission as well as some of the challenges faced in exercising the Commission's oversight role.

- made presentations before the Military Police Symposium on March 31, 2011. Glenn Stannard, Commission Chairperson, and Ms Julianne Dunbar, General Counsel, were honoured to make those presentations.
- effectively met significantly increased media and other demands from within and outside government for information related particularly to its high profile Afghanistan Public Interest Hearing; throughout 2010-11, the Commission provided timely, open press releases, backgrounders and other documents, including updates on its website and individually tailored responses as required.
- complied with reporting requirements to Parliament and central agencies through the preparation and submission of a range of strategic documents such as the Report on Plans and Priorities, the Departmental Performance Report; the Annual Report; and Public Accounts as well as reporting on compliance with other legislative requirements such as the *Access to Information Act*, the *Privacy Act*, and the *Official Languages Act*.

Cooperation

The Commission requires the cooperation of its stakeholders and partners to be successful. For example, a Final Report cannot be issued until the appropriate authority in the military or defence hierarchy has provided a response to the Commission's Interim Report and recommendations for improvements. The fact that for the 5th year in a row, 100% of its recommendations were accepted and implemented reinforces existing productive working relationships.

The Commission also continued to cooperate in various intra-government initiatives through its affiliation with other Small Agencies' sharing expertise and experience to seek operational and administrative solutions to common problems. For example, these include the Heads of Federal Agencies, the Small Agencies Personnel Advisory Group, the Shared Services Working Group and the Burden of Reporting Working Group.

The Commission continued to contribute its expertise and experiences to civilian oversight organizations and it has helped to clarify and strengthen operational policies and procedures through its investigation of conduct and interference complaints such as those involving abuse of power, inappropriate behaviour, inadequate investigations by the Military Police and interference in a Military Police investigation.

| Priority | Type | Strategic Outcome(s) and/or Program Activity(ies) |
|--|---------|--|
| Improving governance | Ongoing | Provide effective governance to assist in the effectiveness of the complaints resolution process. |
| The Commission continues to seek ways to work more efficiently, in compliance with the requirements of both the Commission and the central agencies, while ensuring its resources are applied in a manner to achieve the best results. | Ongoing | |
| The Commission will continue to review and strengthen its staffing, succession planning, and knowledge retention practices wherever needed in order to ensure the continued effective delivery of Commission services. | Ongoing | Provide resources and expertise to efficiently and effectively deliver programs and services of the Commission in order to meet its mandate. |
| Status: Met all | | |
| In drafting reports or other documents to meet the mandatory requirements of central agencies, the Commission engaged with these agencies in advance to ensure its compliance with those requirements as well as those of the Commission as a micro-agency. In so doing, the Commission made the process more efficient. | | |
| Relying on service providers in staffing provided the MPCC with a relatively stable, qualified, and experienced work force. | | |

PRIORITY 2 - Improving Governance

The Commission continues to seek ways to work more efficiently, in compliance with the requirements of both the Commission and the central agencies while ensuring its resources are applied in a manner to achieve the best results.

Highlighted below in bold are the five planning elements contained in the Commission's 2010-11 RPP to support the achievement of PRIORITY 2, along with a summary paragraph (s) of related performance and activities carried out for each of these elements.

Planning and Reporting: Planning and reporting policy requirements continued to increase. This necessitated the Commission's access of a range of service providers in order to meet central agency requirements and standards in finance, human resource, staffing, security, access to information and privacy, records management and informatics, and the content and structure of the Commission's website.

Evergreening Program: As part of new policy requirements for the Investment Plan, the Commission's Evergreening Program included not only information technology assets but also all other assets including professional services. The Commission also undertook specific initiatives to 'green' Commission operations consistent with the government's Green Procurement strategy. Over the longer term, the Commission will advance the automation ("greening") of previously paper-based functions to become more environmentally friendly.

Business Continuity Plan: During the reporting period, the Commission reviewed, updated and communicated its emergency response plans, including roles and responsibilities to reinforce staff awareness and preparedness. This included providing first aid and defibrillator training to the first responders, responding to emergencies such as the earthquake and flooding, and implementing an annual flu shot program during the fall/winter seasons.

Human Resources: The Commission continued to stress effective human resource planning including anticipating potential staff turnover, developing staffing strategies to help ensure that knowledge is retained and that vacancies are filled as quickly as possible.

To become more efficient, the Commission implemented various automated human resources processes and systems consistent with human resources renewal priority and government-wide initiatives. This included the implementation of the automated leave application; the Employee Passport which helps to ensure timely transfer of employees' records from one Public Service department to another; Compensation Web Application; application related to the Public Service Health Care Plan coverage; and Virtual pay application which will enable employees to view their pay on line. Over the longer term, the automation ("greening") of previously paper-based functions will be environmentally positive.

Risk Management and Management Reviews: The Commission continued to maintain its risk management framework and conducted management or business reviews based on the high risk elements identified in the framework.

The Commission conducted five internal reviews

- *Privacy Act*: A Phase I gap analysis was initiated to determine the level of compliance with the *Privacy Act* and other relevant government policies and directives.
- Information Management (IM): In preparation for the horizontal audit, the Commission implemented Phase II of the information management review and identified related processes and practices.
- Information Technology (IT): Phase II of the information technology management review continued throughout the year. The Commission hired a technical writer to document all IT processes and procedures including key areas as IT security and incident response. In addition, the Commission implemented a project to upgrade the information technology infrastructure with a virtualized network.
- Library Services: A gap analysis of the library collection was initiated in order to identify opportunities to create a more "paperless" environment. This included a review of the current collection of books against publications available and accessible on the internet and in other legal databases.
- Electronic Document Management: consistent with the IM and IT management reviews, a Phase I gap analysis was carried out of existing records and document holdings. The goal of this gap analysis was to determine which electronic document management solution would best meet the requirements of all areas of Commission operations including administration, Privacy and Access to Information, and a case management system.

As per the normal scheduled cycle, the Commission initiated a staffing management review in 2010-11 which continued into 2011-12. This scheduled review examined compliance, trends, and file management and the results are used to ensure all staffing actions are managed and administered in accordance to the legislation and delegation of authorities.

During the reporting period, the Comptroller General (CG) conducted an official audit regarding the Commission's information management practices. The CG's initial assessment was received; however, the final report has yet to be issued.

Risk Analysis

Capacity and Timeliness

As a micro-agency, the Commission continued to address issues that are both unique and complex including meeting the standards set by central agencies for Departments and Agencies.

Planning and reporting policy requirements continued to increase necessitating the Commission's access of a range of service providers in order to meet central agency requirements and standards in; finance, human resources, staffing, security, access to information and privacy, records management, informatics, and the content and structure of the Commission's website.

As a micro-agency, the Commission has limited resources and capacity to meet increased, externally-imposed standards and policy requirements. As a result, on an ongoing basis, it evaluated and prioritized how best to apply its resources to ensure, to the greatest degree possible, compliance with central agency expectations.

In addition, the time required to conduct investigations and to complete the necessary research and analysis continued to increase. The complexity of the cases is resulting in thousands of pages of evidence and the need to identify, schedule and interview multiple witnesses across Canada and abroad. All of these factors contribute to extending the duration of an investigation and the length of time required to write Interim and Final Reports. The additional time involved increases the costs.

Resources

As a micro-agency, the Commission is not resourced to conduct large Public Interest Hearings. As a result, the Commission sought and obtained additional funds over the three year period ending in 2010-11 to cover the one-time costs of both the Public Interest Hearing including Federal Court challenges.

Should such a requirement arise once again, additional funding will again need to be obtained and perhaps consideration of a permanent increase in its reference level.

Collaboration

The Commission continued its practice of ongoing discussions with the Canadian Forces Provost Marshal and senior military police staff to address and resolve issues and to even further strengthen the complaints resolution process.

Recommendations for improvements in the Commission's Interim and Final reports are not binding on the Canadian Forces and the Department of National Defence. The Commission continued to foster quality working relationships in order to facilitate the conduct of the investigations and the likelihood that recommendations will be accepted and implemented. For the 5th year in a row, 100% of the Commission's recommendations were accepted for implementation by the CFPM.

Human Resource Planning

The success the Commission has achieved is due in large part to its knowledgeable and stable workforce. But like all small and micro-agencies, it can be difficult to retain employees when, for the most part, the size and flatness of the organization limit opportunities for advancement.

The Commission undertook a review of its organization structure and amended it to ensure adequate succession planning, provide opportunities for advancement wherever possible and realigned positions to stabilize the Commission in areas such as the Registry, Information Technology, and Finance. The Commission continued to stress effective human resource planning, anticipating potential staff turnover and developing staffing strategies to help ensure that knowledge is retained (e.g. through employee learning plans) and that vacancies are filled as quickly as possible.

However, increased accountability and transparency standards have lengthened the staffing process and made it more difficult to staff positions in a timely manner. As a micro-agency, one Commission employee may oversee several programs and staffing delays result in increased cost to the Commission as well as the transfer of workload onto other employees who are already fully engaged in fulfilling their existing responsibilities.

Legislative Risks

As a result of the Commission's experience in the Amnesty International Canada (AIC)/British Columbia Civil Liberties Association (AIC/BCCLA) complaints, the Commission identified several areas presenting challenges and potential long-term risks to its fundamental role as an oversight agency. Issues of concern included the Federal government's reluctance to provide the Commission with appropriate legislative authority under the *Canada Evidence Act* to access sensitive information; interpretation of what constitutes a policing duty and function; the Commission's involvement in judicial reviews by not being named as a party leaving the parties (i.e. the complainants) to fund and argue the cases before the Federal Court.

Governor-in-Council (GIC Appointments)

The Commission continues to rely on the Federal government to identify, recommend and appoint full-time and part-time GIC members in a timely manner. During 2010-11, the Commission was challenged by vacant part-time GIC member positions and the renewal of the existing GIC members' tenures. The already heavy workload carried by Commission members continues to increase both in terms of volume and complexity. The lack of an adequate number of qualified GIC members to meet these workload demands could potentially compromise the integrity of Commission processes including response timelines for the investigation of cases.

Designated as Chief Executive Officer (CEO) of the Commission, the Chairperson is accountable for all Commission activities and for the achievement of results. Based on the *Terms and Conditions of Employment for Full-Time Governor in Council Appointees*, the Chairperson has been designated as Chief Executive Officer, statutory deputy head or "Deputy Head" as defined by the *Financial Administration Act* and as designated through the Governor in Council (GIC).

As Deputy Head, the Chairperson is accountable to Parliament for fulfilling management responsibilities, including financial management. This includes accountability for allocating resources to deliver Commission programs and services in compliance with governing legislation, regulations and policies; for exercising authority delegated by the Public Service Commission for human resources; for maintaining effective systems of internal controls; for signing accounts in a manner that accurately reflects the financial position of the Commission; and for exercising any and all other duties prescribed by legislation, regulations or policies relating to the administration of the Commission. Although, this work cannot be completed without the dedication and expertise of the Commission staff and subject matter experts i.e. accountants, lawyers, investigators, etc.

Expenditure Profile

The Commission works effectively with a reference level of \$3.5M to support its program activities regarding Complaints Resolution and Internal Services which also includes the Office of the Chairperson.

Due to the Afghanistan Public Interest Hearing, the financial resources of the Commission have increased for the three year period ending 2010-11. As mentioned earlier, the Commission sought and received additional funding to address the Public Interest Hearing and the related Federal Court applications.

Almost the entire amount can be attributed to the costs of the Public Interest Hearing and the Federal Court challenges. The actual costs charged to the Hearing, in 2010-11, were \$983K.

Summary of Performance

2010-11 Financial Resources (Indicate \$ denomination)

| Planned Spending | Total Authorities | Actual Spending |
|------------------|-------------------|-----------------|
| \$4,685 | \$7,001 | \$4,423 |

2010-11 Human Resources (full-time equivalents—FTEs)

| Planned | Actual | Difference |
|---------|---------|------------|
| 21 FTEs | 16 FTEs | 5 FTEs |

As a result of the Public Interest Hearing and the Federal Court application, the Commission requested and received an additional \$5.0 million over three fiscal years: \$1.2 million in 2008-09; \$2.6 million and three FTEs in 2009-10; and \$1.2 million and two FTEs in 2010-11.

Strategic Outcome: Conduct complaints against the Military Police and interference complaints by the Military Police are resolved in a fair and timely manner and recommendations made are implemented by the Department of National Defence and/or the Canadian Forces.

| Performance Indicators | Targets | 2010-11 Performance |
|---|---------|---------------------|
| Improving the effectiveness and efficiency of the complaints resolution process | Ongoing | Met all |
| Improving governance | Ongoing | Met all |

| Program Activity | 2009-10 Actual Spending (\$ denomination) | 2010-11 ² (\$ denomination) | | | | Alignment to Government of Canada Outcome |
|--------------------------|--|--|---------------------|----------------------|--------------------|---|
| | | Main Estimates | Planned Spending | Total Authorities | Actual Spending | |
| Complaints Resolution | \$3,507 | \$2,670 | \$2,670 | \$3,736 | \$2,288 | Maintaining safe and secure communities in Canada and abroad |
| Total | \$3,507 | \$2,670 | \$2,670 | \$3,736 | \$2,288 | |

Notes:

1. Includes \$2.1M received in the Supplementary Estimates primarily for the costs of conducting the Public Interest Hearing and of responding to judicial challenges to the Commission's mandate in Federal Court.
2. Includes \$983K spent on the Public Interest Hearing and Federal Court costs.

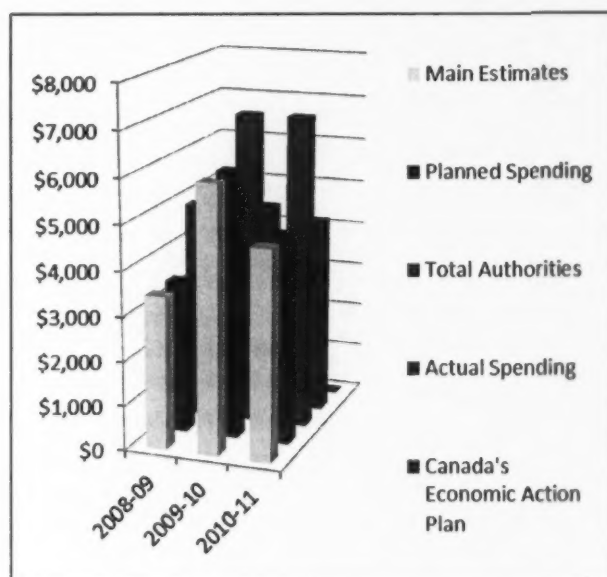
| Program Activity | 2009-10 Actual Spending (\$ denomination) | 2010-11 (\$ denomination) | | | |
|-------------------|--|---------------------------|---------------------|----------------------|--------------------|
| | | Main Estimates | Planned Spending | Total Authorities | Actual Spending |
| Internal Services | \$1,169 | \$2,015 | \$2,015 | \$3,265 | \$2,135 |

2. Commencing in the 2009-10 Estimates cycle, the resources for Program Activity: Internal Service is displayed separately from other program activities; they are no longer distributed among the remaining program activities, as was the case in previous Main Estimates. This has affected the comparability of spending and FTE information by program activity between fiscal years.

Expenditure Profile

Canada's Economic Action Plan (EAP)

Departmental Spending Trend (\$ millions)



Estimates by Vote

For information on the Military Police Complaints Commission's Votes and/or statutory expenditures, please see the 2010-11 Public Accounts of Canada (Volume II) publication. An electronic version of the Public Accounts is available on the Public Works and Government Services Canada website.³

3. See Public Accounts of Canada 2010, <http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html>

Section II: Analysis of Program Activities by Strategic Outcome

Strategic Outcome

Conduct complaints against the Military Police and interference complaints by the Military Police are resolved in a fair and timely manner and recommendations made are implemented by the Department of National Defence and/or the Canadian Forces.

Program Activity: Complaints Resolution

Program Activity Descriptions

This program aims to successfully resolve complaints about the conduct of military police members as well as complaints of interference with military police investigations by overseeing and reviewing all complaints received. This program is necessary to help the military police to be as effective and as professional as possible in their policing duties and functions.

Conduct Complaints

Anyone may make a conduct complaint regarding the Military Police in the performance of their policing duties or functions, including those individuals not directly affected by the subject matter of the complaint. The Canadian Forces Provost Marshal (CFPM) is responsible for dealing with complaints about military police conduct in the first instance. The Commission has the authority to monitor the steps taken by the CFPM as it responds to complaints, and to intervene as required.

Conduct Complaints Process

Conduct Complaint Filed

Anyone may make a conduct complaint regarding the Military Police in the performance of their duties or functions, including individuals not directly affected by the subject matter of the complaint. Such complaints are initially dealt with by the CFPM. Informal resolution is encouraged.

Complaint Investigated by the Canadian Forces Provost Marshal

As the CFPM investigates a complaint, the Commission monitors the process. At the conclusion of the investigation, the CFPM provides a copy of the Report of Findings and Actions to the Commission. The Commission may at any time during the CFPM investigation, assume responsibility for the investigation or call a public hearing if it is deemed to be in the public interest to do so.

Request for Review

Complainants can request the Commission review the complaint if they are not satisfied with the results of the CFPM's investigation or disposition of the complaint.

Commission Reviews Complaint

At a minimum, this process involves a review of documentation related to the CFPM's investigation. Most often, it also includes interviews with the complainant, the subject of the complaint, and witnesses, as well as reviews of relevant legislation and police policies and procedures.

Commission Releases Interim Report

At the completion of the review, the Chairperson forwards the Interim Report to the Minister of National Defence, the Chief of Defence Staff and the CFPM setting out the findings and recommendations regarding the complaints.

Notice of Action

The Notice of Action is the official response by the Canadian Forces to the Interim Report and it outlines what action, if any, has been or will be taken in response to the Commission's recommendations.

Commission Releases Final Report

After considering the Notice of Action, the Commission issues a Final Report of findings and recommendations. The Final Report is provided to the Minister, the Deputy Minister, the Chief of Defence Staff, the Judge Advocate General, the CFPM, the complainant and the subject of the complaint, as well as anyone who has satisfied the Commission that they have a direct and substantive interest in the case.

Interference Complaints

The Commission has the exclusive authority to deal with interference complaints. Any member of the Military Police who conducts or supervises a military police investigation and believes a member of the CF or a senior official of the DND has interfered with, or attempted to influence a military police investigation, may file a complaint with the Commission. This process recognizes the special situation of the Military Police, who are both peace officers and members of the CF subject to military command.

Interference Complaints Process

Interference Complaint Filed

Members of the Military Police who conduct or supervise investigations may complain about interference in their investigations.

Commission Investigates

The Commission has sole jurisdiction to investigate interference complaints. A preliminary review is conducted to determine whether an investigation should be commenced, the scope of the investigation and how to approach the investigation. Once this is completed, the Commission commences an investigation.

Commission Releases Interim Report

The Interim Report includes a summary of the Commission's investigation, as well as its findings and recommendations. This report goes to the Minister of Defence; the Chief of Defence Staff if the alleged interference was carried out by a member of the military or to the Deputy Minister if the subject of the complaint is a senior official of the Department; the Judge Advocate General; and the CFPM.

Notice of Action

This official response to the Interim Report indicates the actions, if any, which have been or will be taken to implement the Commission's recommendations.

The Commission Releases Final Report

Taking into account the response in the Notice of Action, the Commission prepares a Final Report of its findings and recommendations in the case. The Final Report is provided to the

Minister; the Deputy Minister; the Chief of Defence Staff; the Judge Advocate General; the CFPM; the complainant and the subject(s) of the complaint, as well as anyone who has satisfied the Commission that they have a direct and substantive interest in the case.

Conduct and Interference Complaints

The complaints resolution process results in Interim and Final Reports containing findings and recommendations which identify opportunities for individual or systemic improvements, where required. Conduct and interference complaint cases reviewed by the Commission represent the widest possible range and complexity involving legislative, policy, procedural, training, supervision and other issues.

Recommendations, when implemented, are designed to improve the quality of policing which, in turn, will contribute to maintaining the confidence and support of those the Military Police serve.

Public Interest Investigations and Hearings

At any time when it is in the public interest, the Chairperson may initiate an investigation into a complaint about police conduct or interference in a police investigation. If warranted, the Chairperson may decide to hold a public hearing. In exercising this statutory discretion, the Chairperson considers a number of factors including, among others:

- Does the complaint involve allegations of especially serious misconduct?
- Do the issues have the potential to affect confidence in Military Police or the complaints process?
- Does the complaint involve or raise questions about the integrity of senior military or DND officials, including senior Military Police?
- Are the issues involved likely to have a significant impact on Military Police practices and procedures?
- Has the case attracted substantial public concern?

2010-11 Financial Resources (\$ denomination)

| Planned Spending | Total Authorities | Actual Spending |
|------------------|-------------------|-----------------|
| \$4,480 | \$5,243 | \$3,507 |

2010-11 Human Resources (FTEs)

| Planned | Actual | Difference |
|---------|--------|------------|
| 13 FTEs | 8 FTEs | 5 FTEs |

Notes:

1. Includes three FTEs for the Public Interest Hearing and of responding to judicial challenges to the Commission's mandate in Federal Court.
2. Includes three FTEs utilized for the Public Interest Hearing and Federal Court activities.

| Expected Results | Performance Indicators | Targets | Performance Status |
|--|--|--|--------------------|
| To successfully resolve complaints about the conduct of military police members, as well as complaints of interference with military police investigations, by overseeing and reviewing all complaints received. This program is necessary to help the military police be as effective and as professional as possible in their policing duties and functions. | Recommendations resulting from investigations of conduct or interference complaints are accepted by the Department of National Defence and/or the Canadian Forces. | 70% of the recommendations accepted | Exceeded |
| | Investigations of conduct or interference complaints are resolved within targeted timeframes as established by the Commission Chair. | 70% resolved within adjusted time frames established by the Commission Chair | Met all |

| | | | |
|--|---|------------------------------------|----------|
| | 70% of individual members receive remedial measures and/or improvements were made to military police policies and practices pursuant to investigations of conduct or interference complaints. | 70% of recommendations implemented | Exceeded |
| Presentations given on the mandate, role and responsibilities of the Commission. | Number of presentations given. | 13 presentations | Met all |

Performance Summary and Analysis of Program Activity

- Weekly case status meetings were held by operations staff. Case status reports were circulated in advance of meetings. Deadlines/target dates were discussed and approved by the Chairperson. At times, strict adherence to the critical path was not possible due to a variety of factors such as deployments, witness unavailability, competing priorities or the complexity of investigations.
- Multiple presentations and information sharing sessions regarding the Commission's activities, expertise and experience e.g. six Outreach Program bases visits; for the first time, five presentations at the Canadian Forces Military Police Academy in Borden, Ontario; presentation to a university military law class and at the Military Police Symposium.

During 2010-11, the Commission monitored the Canadian Forces Provost Marshal's (CFPM) investigations of 46 complaints about military police conduct, an increase from previous years. Four (4) interference complaints were received during the reporting period, also representing an increase from previous years.

The Commission issued six interim reports and seven final reports. One hundred percent (100%) of the Commission's recommendations were accepted for implementation by the CFPM or the Chief of the Defence Staff, as was the case in the four previous years.

| | 2007-08 | 2008-09 | 2009-10 | 2010-11 |
|---|---------|---------|---------|---------|
| Conduct Complaints Monitored | 27 | 42 | 42 | 46 |
| Interference Complaints | 0 | 0 | 1 | 4 |
| Reviews | 6 | 8 | 7 | 4 |
| Public Interest Investigations/Hearings s. 250.38 | 0 | 3 | 0 | 1 |
| Judicial Proceedings (e.g. Judicial Review) | 0 | 3 | 2 | 3 |
| General Files (Request for information / Outside Jurisdiction of MPCC and Others) | 25 | 28 | 49 | 42 |
| Interim Reports | 5 | 9 | 6 | 6 |
| Final Reports | 6 | 8 | 11 | 7 |
| Findings | 56 | 64 | 66 | 27 |
| Recommendations | 65 | 26 | 30 | 7 |
| Percentage of Recommendations Accepted | 100% | 100% | 100% | 100% |

(1) Afghanistan Public Interest Hearing and related Federal Court proceedings

Since 2007 the Commission has been investigating a series of complaints regarding military police conduct in relation to the handling and transfer of detainees in Afghanistan. By April 1, 2010, the only complaint outstanding was a complaint from Amnesty International Canada and the British Columbia Civil Liberties Association (AIC/BCCLA) alleging that members of the military police failed to investigate the decisions of the Task Force Commanders in Afghanistan to transfer Afghan detainees to a foreseeable risk of torture or abuse by the Afghanistan authorities. It was alleged that these transfers were ordered with knowledge of, or with wilful blindness to, the real risk of torture or mistreatment post-transfer. This complaint has been referred to as the 'failure to investigate' complaint.

For months prior to April 2010, the Commission's progress with the Afghanistan Public Interest Hearings into the 'failure to investigate' complaint, and a related complaint into MP involvement with the physical transfer of those detainees (the 'transfer complaint'); had been delayed due to; ongoing challenges with gathering documents; access to witnesses; and by legal challenges in Federal Court to the scope of the Commission's mandate to investigate these complaints.

On September 16, 2009, the Federal Court of Canada ruled that the Commission lacked the jurisdiction to investigate and hold hearings into the transfer complaint, but the Commission's jurisdiction was upheld with respect to the failure to investigate complaint. After much public scrutiny and media attention to the delays in document production and problems with access to witnesses, the Government of Canada began to comply with summonses with respect to document production such that, by April 2010, the Commission was in a position to commence substantive hearings into the failure to investigate complaint.

The period from April 2010 to February 2011 was intensely busy. The Commission panel, composed of Chairperson, Glenn Stannard and Commission Member, Roy Berlinquette, heard from 37 witnesses including the named subject military police personnel, in addition to presiding over numerous motions and the final submissions from the parties. The hearings attracted significant public and media attention. Final oral submissions were heard on February 2, 2011, whereupon the Commission concluded the investigative phase of its hearings and adjourned to review the evidence and submissions, and draft its Interim Report.

Despite the conclusion of hearings, three judicial review applications were pending in Federal Court, brought by seven of the subjects, Brigadier General Blanchette, and the Attorney General of Canada. The first application sought to set aside a documentary summons issued to Brigadier General Blanchette by the Commission. The second and third applications related to interlocutory decisions by the Commission addressing the standard of conduct against which the subjects of the 'failure to investigate' complaint would be judged, and the test the Commission would apply when determining whether the subject MPs had the 'means of knowing' information about the risks of mistreatment of Afghan detainees. The Commission was granted intervener standing in these proceedings, and prepared accordingly. On March 28 and 29, 2011, the Honourable Justice de Montigny heard oral submissions from all parties and the Commission, and his decision is under reserve.

(2) Challenges to Transparency and Accountability (Privacy and Access to Information)

The Commission has a duty to ensure transparency and accountability in its processes and to serve the public's right to know, especially in cases deemed in the public interest. In 2009 there were further developments associated with an ongoing issue related to the Commission's practice of posting its public interest decisions in their entirety on its website.

This public interest practice has not yet been accepted by the Office of the Privacy Commission (OPC) based on its preference for random initials instead of actual case names. However, the OPC is also of the view that informed public debate about, and confidence in, the integrity of tribunal proceedings are not hindered by non-disclosure of participants' names. The OPC does accept the Commission's practice of publishing depersonalized case summaries of conduct and interference complaints (those not deemed as public interest cases) on its website.

In 2009, two important, related initiatives were undertaken:

- The Commission was a member of a working group comprising a number of other Administrative Tribunals which developed and recommended protocols to the Heads of the Federal Administrative Tribunals Forum regarding the posting of decisions on

websites. These recommendations were accepted by the Forum in May 2009, after which a statement regarding the use of personal information in decisions and posting of decisions on websites was issued. Such action ensures greater commonality in the Tribunals' approaches and also addresses, in large measure, an earlier observation of the OPC regarding apparent inconsistency among the Tribunals' approaches.

- The Commission joined with three other Tribunals and obtained, on November 24, 2009, intervener status in a case before the Federal Court. This case involved important legal issues regarding an individual's challenge to the right of an independent, statutory tribunal to report personal information in the course of conducting an investigation or rendering a report. This includes posting on the Internet based on the 'open court' principle. However, in February 2011, the respondents abandoned their opposition to the application thereby, concluding this case before the Federal Court. As such, these important issues remain unresolved for the time being.

(3) *National Defence Act* - Reform

The Commission also pursued two legislative items: Bill C-41, an *Act* to amend the *National Defence Act* and to make other consequential amendments to other *Acts* received first reading in the House of Commons on June 16, 2010 and following second reading was referred to Committee on December 6, 2010. The Commission also developed constructive comments and recommendations in four areas in order to contribute to the anticipated five year review of the *National Defence Act*: the scope of Military Police oversight; the Commission's access to information; fair and efficient procedures, and Military Police independence.

Lessons Learned

The Commission continues to learn and strengthen its operational and administrative experiences especially from its collaborations with partners and stakeholders.

The Outreach Program broadens the Commission's knowledge and understanding of the many challenges faced by the military police, Canadian Forces members and the community through its delivery of this Program at Canadian Forces' bases and more recently, at the Military Policy Academy. Following each session, the Commission integrates valuable feedback into Commission programs which further strengthens its approach to conduct and interference investigations.

Strategic Outcome

Program Activity: Internal Services

Program Activity Descriptions

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of an organization. These groups are: Management and Oversight Services; Communications Services; Legal Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Real Property Services; Materiel Services; Acquisition Services; and Travel and Other Administrative Services. Internal Services include only those activities and resources that apply across an organization and not to those provided specifically to a program.

2010-11 Financial Resources (\$ denomination)

| Planned Spending | Total Authorities | Actual Spending |
|------------------|-------------------|-----------------|
| \$1,169 | \$3,265 | \$2,135 |

2010-11 Human Resources (FTEs)

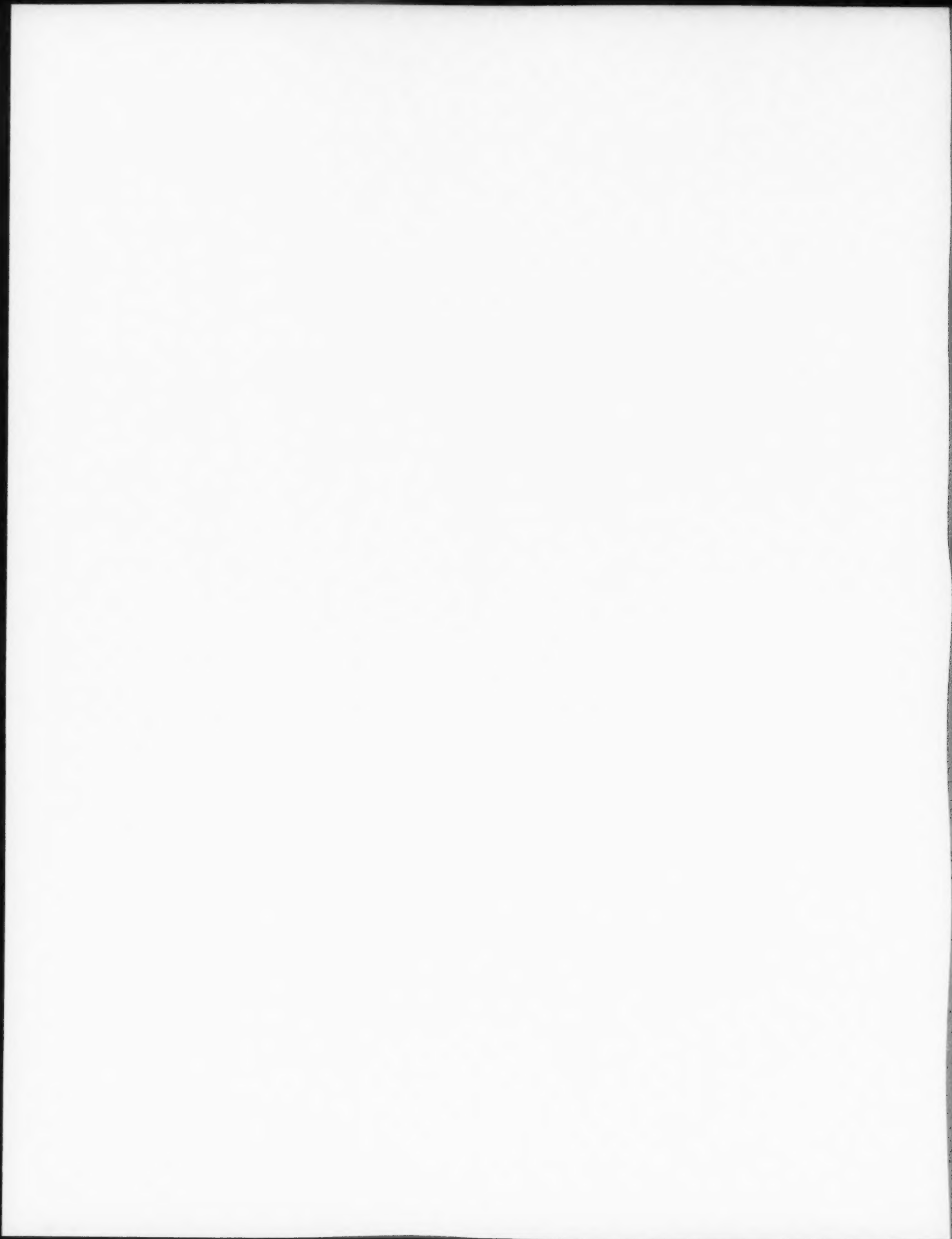
| Planned | Actual | Difference |
|---------|--------|------------|
| 9 FTEs | 6 FTEs | 3 FTEs |

| Expected Results | Performance Indicators | Targets | Performance Status |
|--|-----------------------------------|---------|--------------------|
| Implementation of the Action Plan resulting from the 2009 Information Technology Management Review | Implementation completed | 100% | Met all |
| Planned management reviews are completed | # of management reviews completed | 2 | Exceeded |
| Review and update of | % of policy suite | 50% | Met all |

| | | | |
|--|---|------|---------|
| the policy suite completed | review and updated | | |
| Human resource strategy and learning plans | Number of employees with learning plans | 100% | Met all |

Performance Summary and Analysis of Program Activity

- Phase I of the Action Plan has been completed including initiating Phase II activities e.g. documenting all aspects of information technology, creation of new (upgraded) hardware infrastructure, and implementation of heightened information technology security protocols.
- The Commission conducted five management reviews in the following areas; information management, information technology, library services, the *Privacy Act*, and electronic document management.
- All policy frameworks have been reviewed and updated. This is an ongoing activity subject to new central agency policy requirements, audits and other assessments.
- 100% of employees have learning plans.



Section III: Supplementary Information

Financial Highlights

Condensed Statement of Financial Position As at March 31, 2011 (\$ denomination)

| | % Change | 2010-11 | 2009-10 |
|-------------------|----------|---------|---------|
| Total assets | (5)% | 900 | 947 |
| Total liabilities | 1% | 1,067 | 1,052 |
| Equity of Canada | 59% | (167) | (105) |
| Total | 38% | 0 | 0 |

Condensed Statement of Operations For the year ended March 31, 2011 (\$ denomination)

| | % Change | 2010-11 | 2009-10 |
|------------------------|----------|---------|---------|
| Total expenses | .1% | 4,610 | 4,676 |
| Total revenues | - | - | - |
| Net cost of operations | .1% | 4,610 | 4,676 |

Financial Statements

The financial highlights presented within this DPR are intended to serve as a general overview of the Commission's financial position and operations. The Commission financial statements can be found on its website at: <http://www.mpcc-cppm.gc.ca/300/300-eng.aspx>

List of Supplementary Information Tables

All electronic supplementary information tables found in the *2010–11 Departmental Performance Report* can be found on the Treasury Board of Canada Secretariat website.⁴

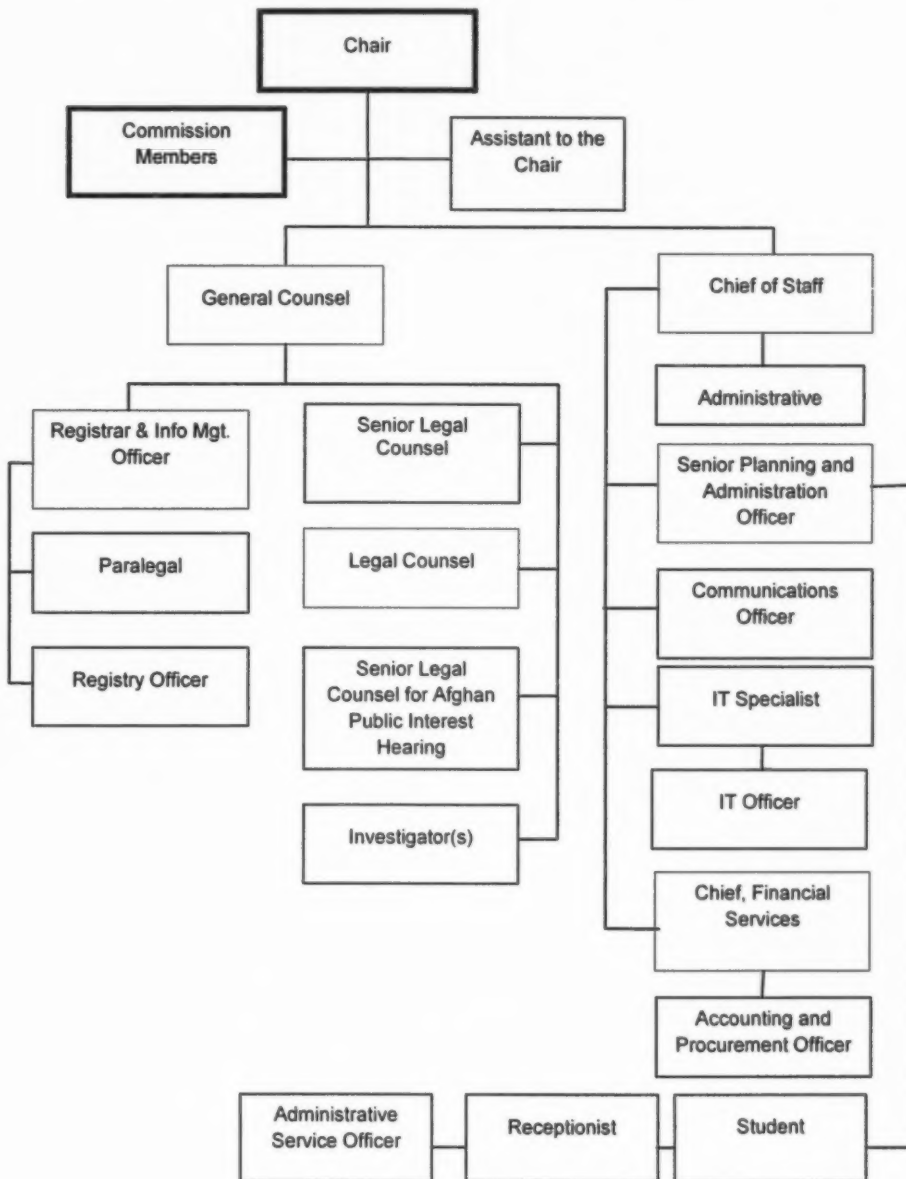
MPCC has no Supplementary Information Tables.

4. See 2010–11 Part III—Departmental Performance Reports (DPR): Supplementary Information (Tables), <http://www.tbs-sct.gc.ca/dpr-rmr/2010-2011/index-eng.asp>.

Section IV: Other Items of Interest

Organizational Contact Information

The following organizational chart represents the Commission in relation to the restructuring of its program activities.



How to reach the Commission

- Call our information line:
(613) 947-5625 or toll free at 1-800-632-0566
- Send us a fax:
(613) 947-5713 or toll free at 1-877-947-5713
- Send us a letter:
Military Police Complaints Commission
270 Albert Street, 10th Floor
Ottawa, ON K1P 5G8
- Visit us at the above address for a private consultation – appointments are recommended
- E-mail us:
commission@mpcc-cppm.gc.ca
- Visit our website:
www.mpcc-cppm.gc.ca
- Media inquiries:
(613) 944-9349 or e-mail media@mpcc-cppm.gc.ca